

EXHIBIT 23

Hearing Before the Committee on Irrigation and Reclamation
on S.2826, January 28, 1926

IRRIGATION DAM ON WALKER RIVER, NEV.

HEARING

BEFORE THE

COMMITTEE ON IRRIGATION AND RECLAMATION

UNITED STATES SENATE

SIXTY-NINTH CONGRESS

FIRST SESSION

ON

S. 2826

**A BILL FOR THE CONSTRUCTION OF AN IRRIGATION
DAM ON WALKER RIVER, NEV.**

JANUARY 28, 1926

Printed for the use of the Committee on Irrigation and Reclamation



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III

IRRIGATION DAM ON WALKER RIVER, NEV.

THURSDAY, JANUARY 28, 1926

UNITED STATES SENATE,
COMMITTEE ON IRRIGATION AND RECLAMATION,
Washington, D. C.

The committee met pursuant to call of the chairman, at 2 o'clock p. m., in the committee room, Capitol, Senator Charles L. McNary presiding.

Present: Senators McNary (chairman), Jones of Washington, Phipps, Gooding, Cameron, Oddie, Shortridge, Johnson, Sheppard, Walsh, Kendrick, Pittman, Dill, and Ashurst.

Also present: Hon. Samuel Shaw Arentz, Representative in Congress from the State of Nevada.

The CHAIRMAN. The committee will be in order. You have been called together to consider S. 2826, a bill introduced by Senator Oddie, for the construction of an irrigation dam on Walker River, Nev.

(Bill S. 2826 is here printed in full as follows:)

[S. 2826]

A BILL For the construction of an irrigation dam on Walker River, Nev.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to expend the sum of \$175,000, to be immediately available, for the purpose of constructing a dam at Schurz Canyon, on the Walker River, State of Nevada, to provide for the irrigation of lands allotted to the Indians on the Walker River Indian Reservation, Nevada: Provided, That the sum herein provided for shall also be available for purchasing and acquiring necessary land and rights of way needed in connection with the construction of said dam.

Sec. 2. That upon the passage of this Act, all proceedings, legal or otherwise, on the part of the Federal Government affecting the rights of water users of the Walker River in the State of Nevada shall forthwith cease and determine.

The CHAIRMAN. There are some people who are interested in the subject here who desire to return home, and they desire to be heard at this time.

Senator JONES of Washington. Mr. Chairman, I want to suggest this, that this committee has not jurisdiction over this bill. This bill should go to the Committee on Indian Affairs. It is a proposition that has to do with the Indians.

Senator PHIPPS. That is what I thought when I read the bill over this morning.

Senator ODDIE. This is a reclamation matter, Senator.

The CHAIRMAN. It has to do with lands on the Indian reservation, has it not, Senator?

Senator ODDIE. It has to do with lands also above the reservation.

Senator JONES of Washington. This says "to provide for the irrigation of lands allotted to the Indians on the Walker River Indian Reservation."

Senator ODDIE. That is a matter that does not affect the Indian lands only, but the lands above the Walker River Indian Reservation in Nevada, as well as lands in California.

Senator JONES of Washington. That does not show on the face of the bill.

Senator ODDIE. Well, the bill can be amended. This is the framework of a bill to get the matter started in Congress.

The CHAIRMAN. I suppose in view of the other lands involved that the Committee on Indian Affairs might not have jurisdiction.

Senator ODDIE. It does involve thousands of acres of land outside of the Indian reservation.

The CHAIRMAN. On the face of the bill we have no jurisdiction, but the testimony might disclose it.

Senator JONES of Washington. We have no jurisdiction, certainly, on the face of the bill.

Senator ODDIE. This bill could be amended.

Senator JONES of Washington. The Committee on Indian Affairs could hear it, if it should go to that committee.

Senator PITTMAN. I suggest that we take the testimony, and then if it has to go to the Committee on Indian Affairs we can refer it to that committee.

Senator JONES of Washington. But if it is a proper matter for that committee to handle, I think that committee should hear the testimony in the first instance.

Representative ARENTZ. May I say this, Mr. Chairman: that the legal question involved here is so far-reaching and will affect almost every reclamation project in the United States, that if this committee will hear this and take it under consideration, and have in mind the testimony, they will see that it has a direct bearing on reclamation as a general proposition; and then if the committee sees fit to transfer this bill to the Committee on Indian Affairs, then it can be done. But I would like to have you gentlemen hear these men who are here.

Senator JONES of Washington. It ought not to be a difficult matter to get the Committee on Indian Affairs together to-morrow, just as you have gotten this committee together to-day.

The CHAIRMAN. I do not know about that.

Senator JONES of Washington. I should think they would have a meeting, under the circumstances.

Senator SHORTHIDGE. Mr. Chairman, with great deference to Senator Jones, I think it will soon be discovered that, while the phraseology of this bill would indicate that it is designed wholly for the benefit of the Indians, the facts will disclose the great interest of other landowners in the subject matter.

Senator JONES of Washington. My interest is in these people, because if we should find that this bill should go to the Committee on Indian Affairs, they may be a thousand miles or two thousand miles away.

The CHAIRMAN. The fact is, Senators, that I am the ranking member of the Committee on Indian Affairs, and if it develops that it should go to that committee I could carry it over there myself.

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There are other members of this committee who are members of that committee.

Senator CAMERON. I think the majority of the members here are also members of that committee.

The CHAIRMAN. I think we will proceed this afternoon to hear it. Senator Oddie, whom do you want first?

Senator ODDIE. Mr. Chairman, we have a number of ranchers here from this Walker River district. Mr. Harry Dukes is the secretary of the Walker River irrigation district, and if we can have a statement from Mr. Dukes it will be very helpful to the committee.

The CHAIRMAN. We will be very glad to hear Mr. Dukes.

STATEMENT OF HARRY C. DUKES, SECRETARY WALKER RIVER IRRIGATION DISTRICT, YERINGTON, NEV.

Mr. DUKES. My name is Harry C. Dukes. I live in Yerington, Nev. I am secretary of the Walker River Irrigation District, a public corporation of the State of Nevada, controlling a great area of land immediately above the Walker River Indian Reservation.

Our appearance in this case is particularly because of the fact that a suit has been instituted against the users of water on the Walker River by the Bureau of Indians Affairs, through the Department of Justice. In short, that suit is founded upon the claim of the Bureau of Indian Affairs that a reservation for "Indian purposes" carries with it an implied reservation of the water necessary to irrigate that land.

Senator JONES of Washington. Do you have the riparian doctrine in your district?

Mr. DUKES. No, sir; we have not. Our doctrine is based entirely upon beneficial use.

Senator JONES of Washington. And prior appropriation?

Mr. DUKES. And prior appropriation. If the committee so desires, I will read a written statement covering the situation somewhat in particular. I would prefer to read it, or at least portions of it, if it is agreeable.

The CHAIRMAN. You may proceed.

Mr. DUKES. I will again give my name.

My name is Harry C. Dukes, I am secretary of Walker River Irrigation District, a public corporation of the State of Nevada. My permanent address is Yerington, Nev., the headquarters of the irrigation district. I have lived within the boundary of the Walker River Irrigation District for the past 17 years, have been secretary of the district for the past seven years, and prior to that time water commissioner on the Walker River, farmer and surveyor, and in fact I now own a considerable area of land within the district.

This statement is made before this committee because of the fact that the Department of Justice, on behalf of the Indians resident upon Walker River Reservation on the Walker River, has instituted an action in the United States District Court for the District of Nevada against all the other water users upon the Walker Rivers and their tributaries in the States of Nevada and California, claiming that the defendants are unlawfully depriving the Indians of water for irrigation purposes.

The Walker River Irrigation District comprises all the irrigable land of the east, west, and main Walker Rivers and the tributaries thereon in the State of Nevada, with the exception of Walker River Indian Reservation, and has a total area of 200,000 acres; 184,000 acres are held under private owner-

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ship, or desert land or homestead claim; 147,000 acres are held under patent from the United States and 37,000 acres are under entry claim. The total irrigable area is 160,000 acres, of which 70,000 acres are now under cultivation and 150,000 acres of which are now under ditch and susceptible of cultivation. This land is held by 737 owners, with an average holding of 342 acres, with a minimum holding of 5 acres and a maximum of 20,000 acres. The population is composed of approximately 3,000 people, capable of an expansion in numbers to at least 15,000 people when the improvements, contemplated and under way, are completed.

Besides the irrigable lands included in the Walker River Irrigation District in Nevada, approximately 38,000 acres of irrigated lands are affected in the State of California. These lands are embraced within the valleys of Bridgeport and Antelope, in Mono County.

This is not a new settlement. The first settlers began irrigation and cultivation of the lands in the year 1858. From that time to this the cultivated area has increased from year to year until it now reaches 70,000 acres in Nevada and 38,000 acres in California. Hundreds of miles of canal and ditch have been built in the interim, and the district has just completed construction of two storage reservoirs with a capacity of 92,000 acre-feet of water at a cost of approximately \$800,000. The total estimated value of the investment in lands, canals, and reservoirs is \$15,000,000. The total investment affected is undoubtedly double that amount. The Walker River Irrigation District is traversed by 60 miles of railroad; it has seven towns and communities, six churches, two flour mills, a creamery, two banks with combined assets of more than \$1,250,000; its agricultural products are annually worth \$2,000,000, these products consisting mainly of beef cattle, dairy cattle, horses, sheep, hogs, poultry, hides, wool, butter, honey, alfalfa hay, alfalfa seed, grain, and potatoes. The lands in California have three towns and the principal industry is the raising of livestock.

The climate is very mild; while there are heavy snows in the mountains there is very little snow in the valleys, so that the winters are practically open. The precipitation in the valleys amounts to less than 6 inches per year. Day by day one enjoys the clear, balmy mountain air and bright sunshine. Agricultural crops can not grow without irrigation.

The people possess the pioneer spirit; they are self-reliant, not dependent, nor do they seek favors. They are exponents of the "square deal" and do not ask for special consideration.

Being pioneers, or the descendants of pioneers, they generally acquired the lands now owned under the provisions of the homestead laws and desert-land laws, or purchased them from the State of Nevada after those lands had been donated to the State by the Federal Government for resale to its citizens in order that the State might acquire funds for public purposes.

There is only one way to develop these lands and to make them productive. Nevada is known as a desert land. Her water resources are limited; the rainfall during the crop season is negligible. Water must be conveyed to and put upon the land in order that the land may be made productive. These pioneers in good faith appropriated and placed to beneficial use the public waters of the State. They built dams and ditches, cleared the land of brush, leveled it, planted their crops in it, conveyed the water to and upon it, and "made the desert to blossom as the rose." They, in improving the land, perhaps gained a competence for themselves, but certainly increased the taxable wealth and the resources of the State of Nevada and of the United States.

Heretofore the livestock industry has been the principal agricultural interest of the region and has been dependent principally upon the public range for its development. But since the deterioration of the feed resources of the ranges it has become increasingly important that the area of the farming lands should be increased and improved to produce feed for the stock. It is a well-known fact, and can not be disputed, that the farming area of Nevada can be increased only through irrigation. Water for irrigation, then, is the important thing.

Walker River Reservation was set aside by Executive order of President U. S. Grant on March 10, 1873, in the following words, which may be found on page 282 of the report of the Commissioner of Indian Affairs for the year 1882:

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The PRESIDENT.

EXECUTIVE MANSION,
March 19, 1874.

It is hereby ordered that the reservation situated on Walker River, Nevada, as surveyed by Eugene Monroe, December, 1864, and indicated by red lines on the above diagram in accordance with the fifteen courses and distances thereon given, be withdrawn from public sale or other disposition and set apart for the use of the Pah-Ute Indians residing thereon.

U. S. GRANT.

It is claimed by the Bureau of Indian Affairs at this time that the withdrawal dates back to the temporary withdrawal by the Commissioner of the General Land Office of December 8, 1859, which was in the following words:

GENERAL LAND OFFICE,
December 8, 1859.SAMUEL C. STAMBAUGH,
Surveyor General, Salt Lake City, Utah.

SIR: Pursuant to request, per letter of the 29th ulto., from the Commissioner of Indian Affairs, you are hereby instructed to reserve for Indian purposes the two tracts of land described and indicated by the pink shade on the inclosed map of Utah.

First, "A tract of the northwestern portion of the valley of the Truckee River, including 'Pyramid Lake.'" This tract is triangular shaped and its greatest length is about 53 miles and its greatest width 25 miles.

Second, "A tract in the northeastern part of the valley of Walkers River, including 'Walkers Lake.'" This is an oblong tract, its greatest length about 55 miles, its width at the south end 15 miles, at its north end 8 miles.

You will make such annotations upon the corrected map of the Utah surveying district as will show the reservations in such a manner that hereafter when surveying operations reach the localities the township lines may be extended over the tracts and such connections therewith made as will show in the township plats and archives of the surveyor general's office the extent and purpose, with the date of reservation. You will please acknowledge receipt of these instructions.

Respectfully,

S. A. SMITH, Commissioner.

It is claimed that because of the withdrawal of the land that there was also an implied reservation of the water and that that implied reservation was in the words "Indian purposes" even though words are not found in the Executive order creating the reservation.

Let us attempt to interpret the words "Indian purposes" from the light of the record. The reservation contained about 500 square miles of 320,000 acres, a royal domain for 500 Indians. Possibly one-half of this area was lake. It is a fact that this lake contained, and does contain, great quantities of edible fish, and that great numbers of food birds make their homes on resting places in the vicinity. Antelope, deer, bear, and rabbits were abundant.

The Indian in the year 1860, and for years after, was a savage nomad, at war against the whites, or suspicious of the whites. The principal thought in the minds of the Government agents at that time was, undoubtedly, the segregation of the Indian into localities where he could contentedly hunt and fish and cease to be a menace to civilization. Irrigation of land for the raising of crops was not contemplated.

There was no question of the extinguishment of the land title of the Indian. The Indian never possessed a title to any of the land.

There was, and is, no question of a treaty between the United States and the Indian.

A perusal of numerous reports made by agents of the Bureau of Indian Affairs in regard to the Indian reservation in Nevada, discloses the fact that those agents in the early days did not even suspect that the waters of the streams flowing through these reservations might be used by the Indians to raise cultivated crops. Much less did they suppose that the Federal Government had a sovereign right to those waters, and could reserve them for the future use of the Indian. They had no reason to suppose that such might be the case.

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From page 21, Report of the Commissioner of Indian Affairs, 1861, we quote:
 "No other hope of adequate remedy for the state of Indian affairs in this country presents itself than the vigorous resuscitation of the reservation system, in the light of such improvements as experience has suggested. One of these appears to be the recognition of cattle husbandry as a means of subsistence for the Indian, equal in importance with the tillage of the soil. In the comparatively rainless countries west of meridian 100° agriculture must ever be conducted under circumstances of disadvantage and risk as compared with regions where rains are frequent or periodical. To furnish the Indian, who is naturally far more of a herdsman than a cultivator, with a source of reliance in those not unfrequent seasons when crops almost wholly fail, is to do for him one of the greatest possible benefits, since it closely assimilates the provisions made in his behalf by nature herself ages before the appearance of the white man upon the continent."

No mention there of a possible artificial watering of crops by irrigation.

Let us refer to Document No. 40 of the same report, by James W. Nye, Nevada territorial governor, and ex officio superintendent of Indian affairs in the territory of Nevada, dated August 14, 1861:

"On the 20th of July I started in company with Mr. Wasson and the other employees in that department for the two reservations, one on the Walker River, and the other on the Truckee River. Colonel Blake kindly tendered me an escort of dragoon to accompany us to the Walker River reservation * * *. The chief, Oderkemo, held the talk, which was in substance as follows: 'I told them that the great captain, the President of the United States, had sent me to hold a talk with them. I told him that a government had been formed over this territory, to govern by the same laws the white settlers and the Indian. He replied that he was pleased with such government * * *.'"

We quote from Document No. 40½ by the same author dated July 19, 1861.

"In order to secure permanent peace with the several tribes (Pah-Utes), I am quite satisfied that some definite line of policy must be pursued. Several have been suggested, but the one most advantageous to the Government and to the Indians, as it appears to me, is this: They are by nature herdsmen, and well adapted to that pursuit, and learn with great facility to perform all the necessary care to the successful breeding of cattle, which must form the great staple of their living and support.

"I also recommend that they be furnished some agricultural implements * * *. I have not the fullest confidence in the success of the effort, for the reason that the season is so short that the best kind of culture can produce but few products, and those of an inferior quality."

We quote from the same document, by Warren Wasson, acting Indian agent, dated July 13, 1861:

"Two reservations have been made by the department of lands for the use of the Indians * * * the other is on the Walker River, including the lake of the same * * *. I trust you will perceive the importance of continuing these reservations, so necessary to the subsistence of the Indians. They are the natural homes of the Indians, and abound in fish and game, roots and seeds, their customary food * * *. The two reservations do not contain more than 10,000 acres of arable land."

From the Report on the Condition of the Indian Tribes, 1867, page 514, by C. McDermott, lieutenant colonel, Second California Cavalry, dated September 11, 1865:

"Last year twenty-five thousand (\$25,000) dollars were appropriated for the purpose of cultivating the Truckee and Walker River Reserves. The money has disappeared, and not one pound of anything is being raised on either reserve for the Indians * * *."

And from page 514 et seq., from the sworn statement of Franklin Campbell, dated September 11, 1865:

"I reside at Walker River Reservation, and have resided there off and on since 1st of April, 1862, until October, 1863; then from October 1, 1864, up to the present time. * * * I have been acting agent most of the time. * * * The Walker River Reservation is about 60 miles long by 12 miles wide, including Walker Lake, which takes up probably one-third of the reservation. I should think on the reservation there are about four thousand (4,000) acres of arable land. * * * There is no fencing, only corrals, small and insignificant. There has been no cultivation on the reservation. At present there are about 500 to 600 Indians on the reservation, living in their usual wild way

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by hunting, fishing, and gathering seeds. * * * The Indians catch in Walker Lake and River annually from 150 to 200 tons of fish, I should think, and they gather seed from bunch grass. * * * Land must be cultivated and planted. * * * There have been purchased for the Walker River Reservation, or brought to it for use, a spade, a hoe, a few scythes, rakes, and forks, the latter for haying purposes in cutting and gathering the grasses that grow spontaneous and wild upon the reserve." and from the statement of Second Lieut. Justin Edwards, Company F, First Battalion Nevada Cavalry. Vols. page 516:

"I have been stationed during the time from May 24, 1865, to August 15, following at Walker River Reservation, of Nevada * * *. The Indians are cultivating no ground; no white men are cultivating ground for them. * * * they are living in their usual wild way; * * * and they hunt, gather grass seeds, etc. All the Government buildings are a small house and stable."

From the Report of the Commissioner of Indian Affairs, dated October 31, 1870, and especially from Document No. 29, by H. Douglas, Superintendent of Indian Affairs:

"There are two reservations * * *. The fisheries at the mouth of the rivers are excellent and of immense value as sources of subsistence * * *. Previous to my assumption * * * nothing whatever had been done to develop the agricultural resources of these reservations. I had found the arable land lying waste, without any evidence of an attempt to cultivate it. I would have commenced agricultural improvements on the Walker River Reservations two months ago * * * but I did not wish to contract debts without the funds to pay them * * *. That these reserves have not been valuable * * * is owing to official neglect and maladministration * * *"—and from Document No. 30 by the same author dated May 31, 1870:

"There are about 1,200 acres of arable land * * *. I will try and open an irrigating ditch * * *. The main difficulty * * * is their lack of tribal organization * * *."

Let us quote from the letter of Sarah Winnemucca, daughter of Winnemucca, Chief of all the Pah-Utes, being a part of Document No. 31, of the Report of the Commissioner of Indian Affairs of 1870-71, the letter being dated April 4, 1870:

"So far as their knowledge of agriculture extends, they (the Pah-Utes) are quite ignorant, as they have never had the opportunity of learning."

ADJUDICATED WATER RIGHTS OF WALKER RIVER BASIN

A suit entitled, Pacific Livestock Company vs. Thomas B. Rickey, et al. was instituted in the United States District Court for the District of Nevada in 1902, which terminated in what is now commonly known as Decree No. 731 of that court, having been finished March 22, 1919, consuming a period of some 17 years and entailing an enormous expense. This decree fixed and determined the water rights for 83,613.35 acres involving 1,162.6 cubic feet of water per second; 57,784 acres are within the Walker River Irrigation District and the State of Nevada, 25,829.35 acres are in California. The right to the use of water for some 15,000 of 16,000 acres of land in California were not determined at that time, nor since. The Government of the United States was fully informed of the progress of this suit, and was requested to enter and have its rights determined. The Government did submit proofs, which are embraced within the findings of fact in said decree, which are commonly known as the Thurtell findings, but did not sign the stipulation, nor were its rights adjudicated.

Those finds of fact, with the number of acres irrigated, the amount of water and the dates of priority are as follows:

1868: 4.70 cubic feet of water per second for 385.95 acres.
1873: 3.55 cubic feet of water per second for 205.8 acres.
1875: 6.15 cubic feet of water per second for 512.8 acres.
1883: 7.50 cubic feet of water per second for 625.2 acres.
1886: 1.03 cubic feet of water per second for 85.8 acres.

Since that time various superintendents of the reservation have made application to the State of Nevada for the right to appropriate water for the lands of the reservation. In every instance but one, some one in authority at Washington had compelled the withdrawal of the application. In that solitary instance the application was perfected and a permit was granted by the State of Nevada for the use of 0.32 cubic feet of water per second for the irrigation of 32 acres of land with a priority of 1906.

THE WALKER RIVERS

The East and West Walker Rivers have their source in the Sierra Nevada Mountains in Mono County, Calif., at a general elevation of 10,000 to 13,000 feet above sea level. The West Walker River runs through these mountains for 30 miles until it reaches Antelope Valley, where are 10,000 acres of irrigated land and 15,000 acres of irrigable land. This valley has an average elevation of 5,000 feet. In the lower end of this valley is Topaz Lake Reservoir, with a capacity of 50,000 acre-feet. The lower end of this valley is constructed by mountains to a narrow canyon, through which the river flows to Smith Valley, which has an irrigated area of 15,000 acres capable of expansion to 40,000 acres. The valley has an average elevation of 4,800 feet. The lower end of this valley is also constructed by mountains to a narrow gorge, through which the river flows to Mason Valley, where it converges with the East Walker River.

East Walker River arises immediately east of the West Walker River in the same high mountain and is formed by the convergence of seven creeks in Bridgeport Valley in Mono County, Calif. This valley has an average elevation of 6,000 feet, and contains about 21,000 acres of irrigated land, which is all that can be economically irrigated. Bridgeport Reservoir is in the lower end of this valley and has a capacity of 42,000 acre feet. The river then flows through a narrow gorge, widening at times to $1\frac{1}{2}$ or 2 miles for about 50 miles. Along this long narrow valley are about 5,000 acres of irrigated land which may be increased to 13,000 acres.

As before noted, the two rivers converge in Mason Valley, and form the Walker River. Mason Valley has an average elevation of 4,400 feet, is 23 miles long, with an average width of about 6 miles. It has 32,000 acres of irrigated land capable of expansion to 50,000 acres.

Leaving Mason Valley the river flows through a long narrow valley for 20 miles to the main part of the Walker River Reservation and finally empties into Walker Lake, which has no outlet.

It is reported that the Indians have 1,635 acres of land actually under cultivation at this time, although the findings of fact heretofore referred to gives a right for 1,005.55 acres of various priorities.

WATER SUPPLY

The average water supply measured at Coleville on the West Walker and at the Nevada-California State line is 300,000 acre-feet per year, though this sometimes falls as low as 100,000 acre-feet, and frequently rises to 500,000 acre-feet or even more.

The only dependable water supply comes from the snows upon the mountains of an elevation of 8,500 feet or greater. Naturally these snows are slow in melting and no great run-off is expected until after the middle of May of each year, at which time the higher snows begin to melt rapidly and so continue until after the summer solstice. The flow of the rivers then rapidly diminish until the middle of July or the first of August in ordinary years, when the river changes from a raging torrent to a trickling stream practically negligible as an irrigation supply.

The adequacy of the water supply depends upon the method of use. Of a certainty the natural flow of the rivers does not furnish a dependable season's supply for the irrigation of more than a very small acreage. The graphic curves of the natural flow of the rivers show that the flow drops to a minimum on or about July 15 or August 1 in the average year. Many years that supply, if there were no intervening irrigation, would not reach the Walker River Reservation. However, the white citizens have, in the years, built up an irrigation system that furnishes a dependable return flow that increases the water supply in the late irrigation season. This return flow does not appear once, but many times. Each valley furnishes an independent return flow for use in the valley below. So that the actual available water supply is greater than the nominal rated supply, and this actual supply will increase in direct proportion to the increase in the area of the irrigated lands. In addition to that, the Walker River Irrigation district has built two reservoirs with a capacity of 92,000 acre-feet to further conserve the water. These reservoirs, however, are 65 to 75 miles above the reservation and can not conserve the winter flow below those points. An average of 80 acre-feet per day is now, and has been since September 15 last, wasting past the reservoir and forever lost.

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WATER RIGHTS

The theory of the right to the use of the public waters has been developed through necessity and is the result of "local customs, laws, and decisions of the courts." The fundamental basis being the local customs. In the earlier times the theory of riparian rights was adopted from the old English common law upon the supposition that that law or theory would meet the public necessity in the premises. This, however, was found not to fit the conditions in the western irrigation States, and through the "local customs, laws, and decisions of the courts" has been modified to make the right to the use of the public water accrue through the application of water to beneficial use. The first in time being first in right.

Each of the western irrigation States had discarded, or is discarding, the theory or law or riparianism, and has adopted by statute the law of beneficial use; in fact, one of the States has adopted that theory by constitutional provision, which was approved by Congress, Article VIII, section 1, constitution of Wyoming. That State and Congress evidently having in mind the ninth amendment to the Constitution of the United States, which reads as follows:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

And also the tenth amendment, reading:

"The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people."

The land owners are not interlopers upon the rights of Federal Government: they are not trespassers upon the property rights of the Indians. They have proceeded in entire good faith in acquiring the ownership of land and rights. Their faith in the Constitution and statutes of the United States and of their own State has never wavered and does not now waver; they specifically pin their faith upon the following:

The act of July 26, 1866, section 2339, Revised Statutes of the United States, provided: "Whenever by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and decisions of the courts, the possessors and owners of such vested rights shall be maintained and protected in the same."

and the act of March 3, 1877, the so-called "Desert land act," provides: "It shall be lawful * * * to file a declaration * * * that he intends to reclaim a tract of desert land * * * by conducting water upon the same * * *: *Provided, however,* That the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation; and such right shall not exceed the amount actually appropriated and necessarily used for the purpose of irrigation and reclamation; and all surplus over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights."

"By this act Congress recognized and assented to the appropriation of water in contravention of the common law right of lower riparian proprietors to insist on the continuous flow of the stream." (*United States v. Rio Grande Dam, etc., Co.* (1899), 174 U. S. 690.)

The act of June 17, 1902, the so-called reclamation act, provides: "Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or in any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any land owner, appropriator or user of water into, or from any interstate stream or the waters thereof: *Provided,* That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of right."

The principle contained in the local customs, law, and decisions of courts in Nevada have always been that the public waters are subject to appropriation

and use and that "beneficial use shall be the basis, the measure, and the limit of the right."

Not only have the people relied upon United States statutes in acquiring their land and water rights, but they have also relied upon the rules and regulations of the United States Land Office and reports of the Indian Bureau.

In commenting upon the act of 1806 the Commissioner of the General Land Office, in his report to the Secretary, dated October 27, 1870, says:

"It recognizes and preserves such possessory claims as are valid and effective under local regulations, but does not create them. It substantially embodies a stipulation that the general Government, in disposing of the public domain, will proceed in such a manner as to protect such rights of possession to the same as claimants may be entitled to under such local customs or laws at the time of sale by the United States."

Also let us quote section 26 of Circular No. 474 of the General Land Office, 1916:

"It is a well-settled principle of law in all the States in which the desert-land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water * * *"

Has the Land Office been wrong all these years practicing this rule, or shall that rule be reversed, and the new rule of the Bureau of Indian Affairs be adopted? Are the bureaus in the Department of the Interior each to make its own rule, and are each of those rules to be defended by the Department of Justice? The popular conception of the functions of the Department of Justice is contained in the word justice, but cases, such as this, seem to necessitate a change in nomenclature to the Department of Persecution.

The defendants in this case are looking only for justice. Justice as between man and man. We concede that the lands of the reservation have water rights. We only ask that those rights shall be measured by the same rule as the rights of the lands of the white man.

Hundreds of desert-land entries have been made in this basin in the past years, and patents issued therefor. Hundreds are now pending. In every case the entryman was required to show proof of a sufficient water right acquired under State laws, and not only a right, but an actual water supply. The sworn word of the entryman was not sufficient, but check was made by agents of the land office.

The water supply of the district, and its plans of development were made the special study of a special agent of the General Land Office, and the Commissioner of the General Land Office has approved the supply as adequate for the pending desert-land applications.

Now comes the Bureau of Indian Affairs, supported by the Department of Justice, claiming the General Land Office was wrong; that the States do not own or control the waters of the public innavigable streams. That the water rights heretofore acquired by those desert-land entries are of no value. That they shall be laid waste and revert to the desert, without a chance to the owner thereof to acquire another entry elsewhere. Though, why should he make another attempt? His faith in the promises of the Government is lost. If the Government made one false promise, it probably would make another.

Should the Government, through this suit, be successful in establishing the theory that a Government agent can, by a mere mental process, and years after the completion of the basic fact or act, deprive the citizen of his vested property, the labor of years, and the result of the sweat of his brow, the worth of any irrigated or irrigable land in the arid West is precarious, and the well-being of the West in general is in jeopardy.

No one claims that the verbiage of the documents reserving this land for Indian purposes, or creating the reservation made any reference to water. It is merely claimed that since the lands were reserved, and that the Indians now need water, ergo! the water is not reserved. On the other hand we quote the following extract from annual report of the Department of the Interior for the year 1905, page 144.

"On July 22, 1905, J. R. Meskimos, superintendent of irrigation, was assigned to duty on the Walker River Reservation for the purpose of surveying and planning a system of irrigation on the surveyed lands sufficient to make allotments to the Indians. He was directed to make a survey and prepare maps showing all the irrigation ditches that have been constructed on the reservation and the land covered thereby, giving the acreage, section, township,

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and range, and the number of Indians who can be allotted 20 acres each. Then he is to estimate the quantity of additional land which must be brought under irrigation in order to give 20 acres to every remaining Indian—man, woman, or child—and to determine by surveys the lines of the ditches to be extended and constructed for that purpose. Full instructions were given him as to make proper filings with the State officials for water rights for these Indians."

We call attention particularly to the last sentence.

All these laws, orders, and reports only go to show that the Federal Government has, specifically, by word and act, acknowledged the ownership of the public water to be in the States, that its citizens in the Walker River Basin are not trespassers upon the rights of the Government or its wards, the Indians, but have been entirely within their rights in applying the waters of the Walker River to beneficial use.

It may be asked, "What has this to do with a proposed appropriation to build a reservoir for the Pah-Ute Indians?" It has this: The Bureau of Indian Affairs disregards the laws enacted by Congress and the laws of the State, and relies upon a theory to gain for the Indians a prior right. That theory is evolved from the so-called Winters case. We claim that there is no parallelism between that case and this, and we must fight that theory to the death if invoked against us.

However, there is a cure for the malady. That cure is the building of a storage and regulative reservoir for the benefit of the Indians. A reservoir which will conserve the winter run-off and the peak of the summer flood.

There is now, and there is practically every year, enough water wasted into Walker Lake to fully irrigate all the irrigable land in the reservation. If the theory of the Indian Bureau is correct, that the mental or implied reservation of water for the reservation is correct, and the water of the rivers must be allowed to flow unimpeded to the reservation, the ranches above are practically ruined. The water can then be used but once, while under present conditions the water can be used over and over again.

We reiterate that we do not deny that the Walker River Reservation has a right to the use of water for irrigation purposes. We do deny the kind of right.

There is water enough, both for the Indian and the white, but the water must be conserved. There must be no waste.

We respectfully urge the passage of Senate bill 2826.

Respectfully submitted.

HARRY C. DUKES,

Secretary Walker River Irrigation District.

Approved:

J. I. WILSON,

President Walker River Irrigation District.

F. W. SIMPSON,

Director Walker River Irrigation District.

GEO. PARKER,

Director Walker River Irrigation District.

The CHAIRMAN. Let me ask you here, Mr. Dukes, briefly, how do you propose to use the appropriation called for in Senate bill 2826, and what is the necessity for it?

Mr. DUKES. Briefly it is this: The Walker River Irrigation District is at the lower end of Walker River; and Walker River is a summer torrential stream, in that it is fed by melting snows. These snows melt on the high mountains in the heat of summer. Immediately after the middle of summer the water supply decreases, because it gets colder, and after the latter part of the summer from the natural flow there is no water to grow crops.

The CHAIRMAN. Pardon me, do you mean crops on the Indian reservation, or on lands above the Indian reservation?

Mr. DUKES. Either one, sir. The condition is the same whether you talk about the reservation, or above, except below, being lower, perhaps in drought ceases sooner than otherwise. And in our case we have various valleys which, being irrigated, return the waters

to the stream. The contention of the Bureau of Indian Affairs is that the Indians must have a prior right to the natural flow of the river, running their water past our lands, and the water then can only be used once.

Senator JONES of Washington. Mr. Dukes, let me ask you this: There has been, I suppose, sufficient water in the stream to irrigate the private lands that have been reclaimed, and you have done it; you have taken this water before the Indians have used it?

Mr. DUKES. Yes; for argument's sake.

Senator JONES of Washington. And you have settled there in 1858, you say?

Mr. DUKES. Yes; and from that time on.

Senator JONES of Washington. Let me tell you of a case like yours that I think may possibly help you out. In Yakima we developed an irrigation district there. We developed considerable irrigation there. Then, there was the Yakima Indian Reservation. The settlers went on the land above and took the water out of the stream before it got to the reservation. They commenced there along in 1850 as you say your people did in your case. They were not interfered with by the Government, and finally the white people appropriated all of the low-water flow of the river. The Yakima Indians, a little below, when these claims were made, had a claim to half of the water in the river. But the Government had never asserted their claims. They allowed the people to go in and improve their lands just as you have done only very much more extensively. But the Indians kept on asserting their rights and finally the Indian Bureau asserted the right of the Indians to half of the water in the Yakima River. But in view of the circumstances, that the Government has allowed settlers to go in, we had a proposition here in Congress to purchase out of any money appropriated out of the Treasury, \$600,000, what was equivalent to half of the low-water flow of the Yakima River, and turned it over to the Indians.

Mr. DUKES. Yes, sir.

Senator JONES of Washington. Now, it seems to me you are bringing your case almost on all fours with that case.

Mr. DUKES. I think so.

Senator PHIPPS. Is not that also true in California, where the white people had the use of water for years, but it is asserted that the Indians had the inherent right there, and we recognized that by the construction of the Coolidge Dam. And we have a case pending now in Colorado on the Piney River.

Senator SHORTRIDGE. I understand this bill contemplates an appropriation which would cost the Government much less than the Yakima proposition?

Senator JONES of Washington. Yes; it is a much lesser proposition.

The CHAIRMAN. Do you not contemplate by the use of this money the construction of a dam to hold the water back so that it will regulate the flow of the river so as to have sufficient flow for the white settlers and the Indians?

Mr. DUKES. The white settlers can take care of themselves. We have built two reservoirs. We only ask the Government to take care of the Indians by the construction of the dam.

Senator JONES of Washington. I think that is your strong case, if you confine yourself to that.

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Mr. DUKES. I am satisfied it is with this committee, but not with the Department of Justice.

Senator SHORTRIDGE. The Government has brought an action in the district court of Nevada?

Mr. DUKES. Yes, sir.

Senator JONES of Washington. If Congress would make an appropriation I have no doubt the Indians would be taken care of.

Senator PHIPPS. In the Piney River case, Congress made an appropriation, and we have succeeded in having these matters delayed until it can all be determined with a view to establishing sufficient water for both the white settlers and the Indians.

Senator JONES of Washington. It seems to me this matter might be compromised between the district and the Indian Department if Congress made an appropriation.

Mr. DUKES. We came to Washington with the spirit of compromise. We are not taking all the water.

Senator SHORTRIDGE. Mr. Dukes has made a very interesting statement.

Senator JONES of Washington. The statement made in there attracted my attention, and I thought the statement with reference to our proposition might be helpful to them.

Mr. DUKES. We are very glad to have it.

There is and has been no treaty between the United States and these Indians. I might say that the case upon which the Department of Justice relies is the so-called Winters case, in Montana. In that case there positively was a treaty, and I understand a reservation of water to the Indians. In this case there is no treaty.

In our former suit referred to, the Government did present proofs, which were embraced within the findings of fact in said decree, but did not sign the stipulation, nor were its rights adjudicated. The priorities were from 1868 to 1886 a showing of a total amount of water for 1,900 acres.

Senator GOODING. For the Indians?

Mr. DUKES. For the Indians.

Senator GOODING. They were in the case then? I mean, a party to it?

Mr. DUKES. Technically I believe they were not a party, although they submitted facts and findings of fact were made, but those findings of fact were not embraced in the final decree.

Senator GOODING. That water was adjudicated for all land under cultivation at that time that the Indians had?

Mr. DUKES. Yes; the number of acres is given in my statement.

Senator WALSH. Let me inquire, were they made individual defendants, in their individual rights?

Mr. DUKES. No, sir; as a reservation.

Senator WALSH. In total?

Mr. DUKES. In total; yes, sir.

Senator WALSH. You say neither the Government nor the Indians were parties?

Mr. DUKES. They were asked to become parties.

Senator WALSH. Both of them?

Mr. DUKES. Yes. They were particularly asked to participate. They submitted proof and findings of fact were made, but they

went no further with it, so they are not embraced in the decree itself.

Senator WALSH. Let me understand now, we understand that the Government is appealing to the doctrine in the Winters case?

Mr. DUKES. Yes, sir.

Senator WALSH. In behalf of the Indians herein sued?

Mr. DUKES. Yes, sir.

Senator WALSH. And you are contesting that case and insisting that the doctrine of the Winters case does not apply by reason of these facts and circumstances?

Mr. DUKES. Yes; the total facts and circumstances.

Senator WALSH. We could not here determine it, whether that is right or not.

Mr. DUKES. Oh, no.

Senator PITTMAN. Pardon me. There is still another reason for it; that is, the justification for the Government itself to build this retaining dam at a cost of \$175,000, which would avoid all this. Just one other thing: You may bring it out yourself, but I want to say this—that while it was said in that suit that there was practically 1,000 acres that they had cultivated and had used the waters and had priority for it, there was no decree for it, and at the present time there is very little more land there under cultivation.

Mr. DUKES. There is not that much.

Senator PITTMAN. As a matter of fact, as to the 1,000 acres—I have ridden over it many times, and there is not half of it under cultivation. But they are now claiming in that suit water for 11,000 acres, 9,000 acres of which have never been under cultivation, and there is nobody to cultivate it, and they are even discussing advertising some of this land, the allotment rights of Indians, for sale to anybody that will come in and buy, the water right necessary for irrigation. Now, the 1,000 acres would not give anybody much trouble, but if they advertise this extra 9,000 acres and find buyers for it, and people come in there, it will practically ruin these white settlers who have spent their money and built this reservoir and issued bonds and have their property there.

Senator WALSH. This bill would not settle the matter as to who has a right there.

Senator PITTMAN. No.

Senator WALSH. So far as this appropriation is concerned, it would not settle anything at all.

Senator PITTMAN. It would settle the important cause of complaint. It would give the Indians sufficient water.

Senator GOODING. If they had an available water supply from this dam for these people, that would settle it.

Senator WALSH. I think they would go on with the lawsuit just the same.

Representative ARENTZ. Senator, the district is willing to stipulate to let enough water go down to supply the needs of the Indians for the contemplated acreage on the reservation. The Government does not want that.

Senator WALSH. That is the point I am making, if this money is appropriated and expended the lawsuit would go on just the same.

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Mr. DUKES. The practical situation would be cured, and the Indians would have a dependable water supply whether or not they had a legal water right.

Senator ODDIE. There is a second section in this bill which provides [reading]:

That upon the passage of this act, all proceedings, legal or otherwise, on the part of the Federal Government affecting the rights of water users of the Walker River in the State of Nevada shall forthwith cease and determine.

The bill was just a skeleton, Senator, to bring the matter before the committee.

Senator WALSH. That would mean simply this: That the committee on conference would take the matter out of the hands of the courts. The argument of the department as I understand being that the Indians own this water right now and the courts would take it away from them, provided the Indians owned it. I should think that the facts referred to here might clearly distinguish this case from the Winters case.

Senator SHORTRIDGE. I think so.

Senator WALSH. And probably could not be made applicable, but that is neither here nor there. But if the department is correct these Indians are entitled to water sufficient to irrigate 11,000 acres, and if we adopt this we would deprive them of that right and confine them to water sufficient for 2,000 acres, or less.

Senator PITTMAN. I will say this, that the settlers who are interested in this matter made a very serious effort, both before the Department of the Interior and the Department of Justice to have this question segregated in the form of two causes of actions so that they might move to strike one cause of action and thus carry the main question to the Supreme Court rapidly for settlement; so that instead of involving this whole matter in litigation for years, that the legal question might first be settled. And they have never been able to get the Department of Justice to agree to it.

Senator WALSH. Would not this be the effect of this legislation, Senator: We appropriate this money for the construction of this dam, and let us assume now that the Supreme Court sustains the contention that the Indians are entitled to sufficient water for irrigating 10,000 acres, and then they advertise and sell the land, with sufficient water rights for 10,000 acres, and the new men come in there and they avail themselves of this right, and then your settlers get nothing?

Senator PITTMAN. I do not think there is any doubt about it, unless such dam impounds enough water for the 10,000 acres, and I think Senator Oddie in drawing this bill thought of that. But these gentlemen are going out West, and this may come up in this form or in the form of a compromise, which the department has a right to make. It has not a right to give away, but it has a right to compromise.

Senator WALSH. Certainly.

Senator PITTMAN. As the department has a right to compromise, and these gentlemen have come here at great expense, we thought we would like to have their contention made a matter of record before the committee.

Senator WALSH. Touching the matter of settlement, if I may judge from my own experience, the department set up the claim in the Winters case, as suggested, that the Indians absolutely owned the water from those streams not only for their own use, but might sell the water, the same as any other possession, the same as they might sell a horse. But that doctrine was not accepted by the Circuit Court of Appeals in the Winters case, in which that court held that the Indians' was a prior appropriation and that the remainder of the water over and above what they needed was subject to appropriation. Accordingly, the Indians on the Blackfoot Reservation obtained prior rights to the water flowing over that reservation, but there is a vast field or area where the water is being used, being sufficient not only for the Indians, but also a large area outside. And they established irrigation ditches to the east to use the surplus water over and above the priority of the Indians. And we passed a bill authorizing the Secretary to settle and determine the amount of the priority to the Indians. And the priority is established at a perfectly absurd amount, so that the projected irrigation project to the east is up in the air. And will you not be in the same situation here?

Senator PRYMAN. I do not know. I should continue to hope, Senator, that there may come a time when some of the departments may feel they have exactly the same interest in the whites as they have in the Indians.

Senator WALSH. I might say in that connection, the matter was taken up with Secretary Payne, and it was agreed that the Indians have priority to the extent of 160,000 acres, but the new administration came in and the new administration felt that some legislation was necessary, so we enacted the law of which I spoke, giving the Secretary the specific authority to make the adjustment. And the new administration wants to give the Indians priority to 284,000 acres as against 160,000 acres determined upon by the other administration.

Senator KENDRICK. Did I understand you to say that the court held in that case that the priority attached to the land, some of which was not then reclaimed?

Senator WALSH. Yes, indeed.

Mr. DUKES. We are not fighting the right of the Indians to water. There is plenty of water both for us and for the Indians. It is a mere question of regulation. We are, however, fighting the technical right of 1859 priority because that would place the Indian in a prior place to all of us, and his geographical situation being at the lower end of the stream the court could compel us to pass all the water past our lands and on to him. And in that way there would be a wastage of water. There is now a great wastage of water although we have built a reservoir on each stream and are saving all the water we can. But these reservoirs are situated one 80 miles and one 100 miles above the reservation, and there is a return flow of water all through the winter season. There is also a surplus flow through the flood season during July, so it is not a question of the amount of water; it is a technical right we are fighting, and the building of this reservoir will cure all that situation practically.

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The CHAIRMAN. Well, will the building of this reservoir, if constructed as proposed, supply sufficient water to the Indians and to the white settlers?

Mr. DUKES. It will supply none of the white settlers.

The CHAIRMAN. I understand. You say there is sufficient water in the water, if regulated?

Mr. DUKES. Yes, sir.

The CHAIRMAN. And it will do that very thing for the Indians?

Mr. DUKES. Yes, sir.

The CHAIRMAN. And the settlers will have the water they need now?

Mr. DUKES. Yes, sir.

The CHAIRMAN. And you think it will bring about a settlement of the difficulty between the settlers and the Indians?

Mr. DUKES. It will so far as they are concerned, excepting that technical point.

The CHAIRMAN. How many acre-feet do you expect to impound?

Mr. DUKES. That reservoir will impound anywhere from 6,000 to 10,000 acre-feet, twice each season, according to the plans which may be adopted annually.

The CHAIRMAN. Annually?

Mr. DUKES. No; that would be an actual capacity.

The CHAIRMAN. How many acre-feet do you use there annually?

Mr. DUKES. They probably would use water on only 10,000 acres, possibly 25,000 to 28,000 acre-feet. Now, there would be a flow that they could use—the winter flow would be conserved, which could be used in the spring. The reservoir would be emptied and filled again in the flood season, so that they could have actually all the water they needed.

The CHAIRMAN. For 10,000 acres?

Mr. DUKES. Yes; for 10,000 acres.

The CHAIRMAN. And that is all the land that is irrigable owned by the Indians?

Mr. DUKES. That is all they claim.

Senator KENDRICK. Does your committee and those for whom you speak recognize the right of the Indians to water for these lands that are irrigated now, the same as those they have irrigated?

Mr. DUKES. We recognize the beneficial use according to priority to water; yes. But we are willing to go further than that; yes, sir.

Senator KENDRICK. You are willing to grant that they have the first right to the waters in the stream?

Mr. DUKES. Yes, sir. We would be willing to give them a proportionate share of water, certainly.

Senator KENDRICK. And their lands, as I understand you, are below the lands owned and occupied by the settlers?

Mr. DUKES. Yes, sir.

Senator KENDRICK. And very naturally, according to our contention in the upper irrigation States, there would be enough of the return flow to take care of their lands?

Mr. DUKES. Yes, sir.

Senator PHIPPS. What would be the approximate location of the dam, as regards these two sections of land?

Mr. DUKES. The dam would be very close below the white settlers, and very close above the Indians.

The CHAIRMAN. Would it be upon the lands of the Indians?

Mr. DUKES. It would be on the lands of the Indians. It might flood a small area of land of the whites depending on the height of the dam.

Senator KENDRICK. And would the diversion of the water if it was impounded be at an elevation that would completely cover these lands?

Mr. DUKES. Completely irrigate this 11,000 acres: yes, sir.

Representative ARENTZ. If I may say a word there, Senator. The river is very low during the winter, and until the middle of May. Then with the gates down there is sufficient return of water to irrigate the lands of the Indians now under cultivation. If this water is impounded as we propose, the water in the winter, amounting to about 40 second-feet per day, will be impounded. It will be sufficient for all irrigation needs during the spring season. Then, because of heavy run-off during May, June, and half of July, it will again fill up, and during the time that it is being filled there is sufficient opportunity for the Indians to get all the water they want in addition to the amount stored. So you have the storage water in the winter, the second storage in the flood time, irrigation after flood time by water stored during flood time, so that the Indians would have enough water for their needs under this arrangement.

Senator KENDRICK. That is a very clear statement. I want to ask a question. Would there be any privately owned lands, or lands owned by white people, that would divide this equity of water with the Indians?

Representative ARENTZ. There would be no private lands in the area as contemplated by the construction of the dam in this bill, none whatever. The dam would be constructed below the white settlers' land, above all the Indian land. The major portion of the Indian land is in the shape of a fan at the head of Walker Lake near the mouth of Walker River. Extending upstream from this fan-shaped land to the proposed dam there are about 1,500 acres of tillable land in a strip a quarter to a half mile wide along the river, so that this land could be put under cultivation and the return flow then would be sufficient to irrigate a like amount further down. But if you take the water which the department is asking for now, for 10,000 acres of land, you would have only one use for that water. The water would be compelled to pass over the white settlers' land for a distance of possibly 50 miles. The water for these white settlers which is contemplated to be used by the Indians is used in these valleys, and is then returned to the river in a natural way to be used in the reservoir as contemplated by this bill.

Senator KENDRICK. We from the basin States have every reason to understand the practical workings of that principle, and no matter what subject you attempt to discuss with one of us we always take as our text that return flow and start in on it, because we understand so well what it means.

Representative ARENTZ. And during the past six weeks I have been in touch with the Secretary of the Interior, the Commissioner of Indian Affairs, and the Attorney General, and his assistant, Mr. Parmenter, and also his assistant, Mr. Dyer, who handles the water

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cases, and we have discussed this matter fully, and have gone over the maps and plats, the land under cultivation and the length of time the Indian lands have been under cultivation, the condition of the Indian reservation, and the fact that during all these years there has been so little of it put under cultivation. They have let the settlers come in all along the Walker River above the reservation and file on this land and occupy the land and use the water. Now they file this suit. The Attorney General, and Mr. Parmenter, his assistant, and Secretary Work on request agreed to a conference at which instead of discussing the legal phases of this matter they would discuss the facts; they would allow these gentlemen who came from the irrigation district and their attorneys from California to come here and discuss facts, and they promised to do that. We had a conference with the Secretary of the Interior, in his office. The Attorney General was present. The Commissioner of Indian Affairs was present. From the moment the conference began facts were barred and the discussion, directed by but one official, the Attorney General of the United States, held strictly to points of law. Any promise made was forgotten. Had I known the discussion at the conference would take this trend I would not have requested the calling of one.

The gentlemen before this committee to-day, as well as others who have returned to Nevada, traveled from Nevada to Washington, at great expense, with the distinct understanding, as I have stated, from Attorney General Sargent and Secretary Work that the discussion at the conference would be confined to facts, so that upon these facts a settlement of differences, a compromise, could be arranged on the use of the water of the Walker River, as between the Indians and white settlers. This would have prevented a long drawn out costly law suit. Nothing was accomplished at the conference, except that my constituents are convinced that the Government is adamant in its desire to push the suit with all vigor.

Representative ARENTZ. And since the conference we have tried to arrive at a solution of the suit by specifying the three claims of the Government; to separate them, so that as Senator Pittman has suggested, the motion to strike could be made and the issues of the right of the Government in appropriating the land set aside for the Indians would be brought up. We have been told in so many words to go and be on our way. If that is not injustice to the white man I would like to know what it is.

Senator PHIPPS. I would like to ask a question to get this in my mind. There has been mention made of 1,900 acres, and 10,000 acres claimed, and 11,000 acres has been mentioned. I would like to know what the acreage figures are and what the irrigation of the 1,900 acres is and the 10,000 acres; and whether, if it is 12,900 acres, does that include all of the Indian land that is susceptible of irrigation from the Walker River?

Mr. DUKES. The answer to that, of course, is a matter of opinion. The reports vary. However, in round numbers, there are 1,800 to 2,000 acres under cultivation; 8,000 acres not cultivated. So probably the total irrigable area is something less than 10,000 acres, although the complaint gives 11,000 acres.

Senator CAMERON. So, if they got the water they are demanding they could irrigate 11,000 acres annually?

Mr. DUKES. Yes, sir.

Senator CAMERON. And there is no more irrigable land on the reservation?

Mr. DUKES. That again is a matter of opinion. One engineer will make one estimate, and another another. However, it is likely 11,000 acres is the total. However, by this principle that the Department of Justice is trying to put through, there is no reason why that area could not be extended, as we can see if in the opinion of the engineers it is feasible to irrigate more land on the shores of Walker Lake.

Senator CAMERON. There are other lands?

Mr. DUKES. There are other lands that can be irrigated, whether economically or not I do not know.

Senator ODDIE. Will there not be considerably more water than formerly and also an increased return flow from the new dams just completed?

Mr. DUKES. Undoubtedly. Every acre in addition to what we have now under irrigation will put more return flow into the river. That is a sound engineering fact, I believe.

Senator PITTMAN. What would be the effect on your district if you were compelled to allow sufficient water to go down there without the assistance of the impounding dam, to irrigate that 11,000 acres?

Mr. DUKES. We believe it would result in an abandonment of at least one-third of our project.

Senator PITTMAN. And your project is now mortgaged to secure the bonds?

Mr. DUKES. It is mortgaged to the extent of \$918,500.

Senator PITTMAN. And that was mortgaged for the purpose of putting in these reservoirs that you have put in, instead of asking the Government to do it for you?

Mr. DUKES. Yes, sir.

Senator PHIPPS. Why would the letting of this water without impounding to irrigate 11,000 acres farther down the river cause you to abandon one-third of the 70,000 acres now irrigated? I do not understand that.

Mr. DUKES. The reason for that is this: If they are given this prior claim to this water it must be carried through a river bed 65 miles on one side and 75 miles on the other. And when the low period of the river arrives there is a tremendous seepage loss in the river. When we can divert it in the upper river we can use it, and there is a return flow to the river, over and over again, so instead of a transmission loss there is an actual increase in the amount of water for the season gained through ground storage.

Senator KENDRICK. It would have to be running all the time?

Mr. DUKES. Yes, sir.

The CHAIRMAN. Have you concluded your statement?

Mr. DUKES. I think I have covered the ground.

The CHAIRMAN. If there are no further questions, we will hear Mr. Wilson.

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**STATEMENT OF J. I. WILSON, CHAIRMAN OF THE WALKER RIVER
IRRIGATION DISTRICT, YERINGTON, NEV.**

Mr. WILSON. Mr. Chairman and gentlemen of the committee, my name is J. I. Wilson, president of the Walker River Irrigation District. I have been president of the irrigation district ever since it was established.

I do not know as I can add a great deal to what Mr. Dukes has already said. We were all together in getting up this statement.

The CHAIRMAN. When was this district organized?

Mr. WILSON. In 1920.

The CHAIRMAN. In 1920?

Mr. WILSON. In 1919, to be exact, but the bonds were not sold until 1920.

The CHAIRMAN. There was a good deal of irrigation practiced in the Walker River country by white settlers prior to that time?

Mr. WILSON. I will state that I am one of the oldest settlers in the Walker River Basin. My father and mother left Missouri in 1863 bound for California, and when they got to the Walker River Basin their teams were worn out, and they settled on the Walker River. At the time we went in there there were only about 15 men in the valley. My mother was the first white woman to settle in the Walker River Basin, and I have been living there for the last 62 years.

The CHAIRMAN. Was it an Indian reservation at that time?

Mr. WILSON. Yes, sir.

The CHAIRMAN. When was the reservation set apart by the Government?

Mr. WILSON. Well, they had proposed a reservation in 1859, but as I understand it it was not made a reservation by President Grant until 1874.

The CHAIRMAN. Now, the district was organized in 1919. Prior to that time had white settlers been using any considerable portion of the water to the detriment of the Indians living on the reservation?

Mr. WILSON. Well, in this way—I do not know that it is a detriment. Ever since we have been in the country we have had sufficient water up to the 15th of July. After that time the water drops back almost to nothing. In 1864 we had a very dry year and there was very little irrigation by the settlers. Every 10 or 12 years we have exceedingly dry years. And during those dry years the river gets very low. That is the reason for putting in these reservoirs. We do not have water from the 15th of July, and the people raising potatoes or other crops have to have water in August and September to have a full crop.

The CHAIRMAN. When did the Indians first complain there was not enough water for irrigation purposes?

Mr. WILSON. Well, they complain like the whites, that is, that there was not enough in the fall of the year.

Senator PITTMAN. In other words, there have been years since the beginning that everybody has been short of water in the fall?

Mr. WILSON. That is true.

The CHAIRMAN. Would the Indians have sufficient water for their purposes if there were no white settlers in the valley?

Mr. WILSON. I hardly think they would, because the more irrigation there is above the more return there is in the valley. The return is quite perceptible. You take it where it passes through the mountains, the rim rock comes up, and when you come to the lower end you have practically the same amount as at the upper end.

The CHAIRMAN. What is the percentage of return flow, in your opinion?

Mr. WILSON. I should say from 40 to 60 per cent.

Senator PITTMAN. Let me ask you a question, to make it clear: Your district was organized in 1919.

Mr. WILSON. Yes, sir.

Senator PITTMAN. How many acres of land did you have under cultivation in that valley at the time you organized your district?

Mr. WILSON. I think we had in the neighborhood of 50,000 acres in Mason Valley, and 20,000 acres in Smith Valley.

Senator PITTMAN. Well, how many did you have 10 years before that, would you say?

Mr. WILSON. Well, it had not increased a great deal during those 10 years.

Senator PITTMAN. That is what I am getting at. The fact that you organized your district in 1919 might create the impression that that is when you began irrigation.

Mr. WILSON. No; for 10 years prior to that time there was very little increase in irrigation because of the shortage of water.

Senator PITTMAN. You had practically the same amount of land under cultivation before you organized the district?

Mr. WILSON. Yes, sir.

Senator PITTMAN. And you organized the district for the purpose of putting in these storage reservoirs?

Mr. WILSON. Yes, sir.

Senator PITTMAN. And you have put them in?

Mr. WILSON. Yes, sir.

Senator PITTMAN. Just completed them?

Mr. WILSON. Just completed them.

Senator PITTMAN. And with them in there that will tend to regulate the flow of the river?

Mr. WILSON. That will regulate the flow so far as the upstream is concerned, but we can not take up the return water without another reservoir below. That is the one we want to take care of the Indians.

The CHAIRMAN. Is that the dam contemplated in this bill?

Mr. WILSON. Yes, sir.

The CHAIRMAN. And in your opinion that would supply water to irrigate all the land that is irrigable and owned by the Indians?

Mr. WILSON. Yes, sir.

The CHAIRMAN. Any other questions?

Senator ODDIE. Mr. Wilson, in all these years since the early white settlers have been in that valley, has not the Government invited the white settlers to take up this land under various Federal laws?

Mr. WILSON. Yes; the Government has invited the settlers. The Indian agents, some of them that have been there, said that it was

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better for the white man to be there, that the Indians didn't know anything about farming on their own hook. And they would rather work for the white men. They always worked for us in the summer time, and in the harvest, and in the wintertime they chopped wood, and things like that.

Senator PHIPPS. Are you speaking now of the 1,900 acres of land, or the land where you are located?

Mr. WILSON. In regard to the Indians working?

Senator PHIPPS. No; take this 1,900 acres of land; is that cultivated by Indians or white settlers?

Mr. WILSON. That is cultivated by the Indians, under the supervision of the Government.

Senator PHIPPS. What acreage of land are you cultivating yourself, Mr. Wilson?

Mr. WILSON. Why, I own 700 acres there myself. I own some land we bought there in 1863. It has been handed down from my father.

Senator KENDRICK. I wanted to ask you, Mr. Wilson, if the flow during the flood times of the streams is dependable; is it sufficient in quantity to fill the reservoir?

Mr. WILSON. In the average year it is sufficient. We have small years, like 1924, which was an exceptionally dry year, and there wasn't enough water for anybody. There wasn't enough for anybody in the one reservoir we had completed, but in a normal year there is plenty of water to fill all of the reservoirs and let 40,000 to 50,000 acre-feet go to waste.

Senator KENDRICK. That is to say, the scarcity during that year was more on account of an absence of flood water than due to the fact that you had diverted so much of it?

Mr. WILSON. Yes, certainly; it was due to the fact of no snow falling in the higher areas there. Our mountains take in a watershed running up to an elevation of 13,000 feet, and there was very little snowfall during that winter.

The CHAIRMAN. Does that conclude your statement?

Senator SHORTRIDGE. I would like to ask a question or two.

The CHAIRMAN. Certainly.

Senator SHORTRIDGE. Mr. Wilson, Walker River rises in California, does it?

Mr. WILSON. It rises in California.

Senator SHORTRIDGE. In Mono County?

Mr. WILSON. Yes, sir.

Senator SHORTRIDGE. There are two forks of the river?

Mr. WILSON. Yes; the east and the west.

Senator SHORTRIDGE. Have certain dams been built in California?

Mr. WILSON. One dam wholly in California and another partly in California.

Senator SHORTRIDGE. And partly in the adjoining State of Nevada?

Mr. WILSON. Yes, sir.

Senator SHORTRIDGE. About how far is it from the State line, following the river, to the lake?

Mr. WILSON. From the State line?

Senator SHORTRIDGE. Yes.

Mr. WILSON. On the east fork I should judge up to the reservoir it would be 6 or 7 miles from the State line.

Senator SHORTRIDGE. To the lake--Walker Lake?

Mr. WILSON. Oh, Walker Lake?

Senator SHORTRIDGE. Yes.

Mr. WILSON. Excuse me. Perhaps 100 miles.

Senator SHORTRIDGE. Now, the local community people have expended a very large sum of money in and about the construction of these reservoirs? That is a fact, is it not?

Mr. WILSON. They have expended over \$800,000. They owe that money to-day. They are mortgaged for that amount of money.

Senator SHORTRIDGE. And that is the bonded outstanding indebtedness?

Mr. WILSON. Yes; that is the bonded outstanding indebtedness.

Senator SHORTRIDGE. And the district is obligated to pay that large sum of money?

Mr. WILSON. Every tract of land within the boundary of the district is obligated to pay that amount.

Senator SHORTRIDGE. Exactly. And before the issue of these bonds the people of that community or those communities had expended very considerable sums of money in and about the diverting of the waters of the river, putting them to beneficial uses?

Mr. WILSON. Several million dollars.

Senator SHORTRIDGE. And there are, as stated before by Mr. Dukes, 3,000 or 4,000 people directly interested in this question?

Mr. WILSON. Yes, sir.

Senator SHORTRIDGE. Now let me ask you this: I understand that before the organization of this irrigation district many people had made use of the waters of the river for irrigation purposes, before the organization in 1919 of the district?

Mr. WILSON. Since 1857, I think, in the State of California, they were using water up there for irrigation.

Senator SHORTRIDGE. That is what I wish to develop--that since away back in 1857 citizens of the United States, the Government looking on, diverted waters from this river and put those waters to beneficial uses. That is a fact, is it not?

Mr. WILSON. That is true.

Senator SHORTRIDGE. And they have continued on down through the years, from away back yonder in 1857-58, to divert these waters and devote them to beneficial uses. Is that right?

Mr. WILSON. That is true of California. And in Nevada they were a little later; 1860, I think, is the earliest right we have in Nevada.

Senator SHORTRIDGE. Yes. Do you know whether the Federal Government or either of the State governments objected to the use of the waters by the citizens in the way you have stated?

Mr. WILSON. They did not.

Senator SHORTRIDGE. Were there any injunctions brought, so far as you know?

Mr. WILSON. Not until 1924, when they brought suit and an injunction against us.

Senator SHORTRIDGE. That is, this late suit?

Mr. WILSON. Yes. After 65 years they came in with a suit and injunction against us.

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Senator SHORTRIDGE: What I want to develop, Mr. Chairman, and gentlemen of the committee, is this. I assume these facts, that citizens of the United States have diverted waters from this river and put those waters to beneficial uses during or through this long series of years, and that the Federal Government looked on, was aware of the facts and made no objection. What I shall contend, if it becomes necessary, is this, that the Federal Government as well as the State government will be estopped in equity from asserting a naked legal right, estopped upon well-known equitable principles, just as the individual man or citizen will be enjoined and estopped from asserting a naked legal right if he has looked on and seen another person go forward under claim of title and right and in good faith acquires certain property rights. And for the benefit of the committee, if it be so, I refer to what I think was a great case, entitled the State of Iowa v. Carr, wherein that principle is announced, namely, that the State, the Federal Government, is bound by the same principles as the individual; that when it goes into a court of equity it goes in as a landowner, clothed with no more rights than the individual, as the court says, be he as ragged or as poor as can be imagined. My contention is with regard to this matter—and I shall on proper occasions seek to maintain the proposition—that in respect to these people there in that country, in California, in Nevada, the Government is estopped, even though they are now proceedings on behalf of the Indian, representing him, guardian of him, so to speak—that the plaintiff in this particular case would be estopped from asserting a naked legal right, assuming that they have the naked legal right, if the assertion of that legal right would work injury to citizens who have diverted and made use of these waters for all these many years.

Senator OGDEN: I wish to strengthen the statement just made by Senator Shortridge in this, that the Government did not alone sit by and watch these settlers take up the lands and put the water to beneficial use on them for all these 65 years, but the Government invited them to take up this land with the assumption that they would acquire the water rights with the land. It sold them the land, took their money, put the money in the Federal Treasury, and now has brought this suit against them claiming these water rights it previously recognized as valid in these settlers. This results in a cloud on their title, it is injuring them in many ways, and threatens many of them with ruin.

And furthermore, Mr. Chairman, a very substantial man—and I do not know whether he has some associates or not—from the State of California, has recently purchased a large tract of this land, for which I believe he has paid something like a half a million dollars, which he intends to colonize. This suit has been placed on this land and his hands are tied, his money is tied up, and his clients are afraid to move with this cloud on the title. The Government is in the position in this manner that an individual would be in if he had taken money for a certain piece of property and sold the property again to some one else and taken the money for it a second time.

The CHAIRMAN: Senator, have you any information concerning the rights of the Indians when they took up their public lands by entry? I understood Mr. Wilson to say that the establishment of

the Indian reservation occurred in 1859, which was some years prior to the settlement of the whites in that valley.

Senator PITTMAN. No; do not get that wrong.

The CHAIRMAN. Well, I do not want to get anything wrong.

Senator PITTMAN. Not the word "established." That they proposed; some Indian agent out there proposed.

The CHAIRMAN. Proposed?

Senator PITTMAN. Yes.

The CHAIRMAN. When was it in fact established?

Senator SHORTRIDGE. 1874; is that right, Senator?

The CHAIRMAN. Well, I am asking Mr. Wilson: What is the fact as to that?

Mr. WILSON. Yes, in 1874, by proclamation by President Grant.

The CHAIRMAN. How many settlers were there at that time, and how much water were they using?

Mr. WILSON. They were using very near as much water in 1874—they were in fact using as much water as they are using now, that is true.

The CHAIRMAN. By "they" do you mean the white settlers?

Mr. WILSON. The white settlers. But in the fall of the year the water was short in those days. That is where the trouble is now, it is in the fall, not in the spring and summer, because we have our flood water, and everybody has all the water that is necessary. It is from the 15th of July on that we are short of water.

The CHAIRMAN. I appreciate that. But did the Indians make a prior use of the water to beneficial use over the white settlers?

Mr. WILSON. No, sir; the whites were over the Indians.

The CHAIRMAN. What is that?

Mr. WILSON. The whites were over the Indians. The Indians doing no cultivating whatsoever when we went to that country, they were not cultivating an acre of ground.

The CHAIRMAN. Were they using the water for irrigation purposes at all?

Mr. WILSON. No.

Representative ARENTZ. I beg your pardon, Mr. Wilson, the superintendent of Indians at Carson City made a report in 1871 to the effect that there were 50 acres under cultivation, and that there was a hoe, a mattock, and a rake upon the Indian reservation at that time, in 1871.

The CHAIRMAN. Well, Congressman, in a brief word tell the committee what the claims of the Indians are that influenced the Secretary of the Interior to hold their claims to be superior to the claims of the white man.

Representative ARENTZ. In 1859 the Piute Indians were told as to this section of country, because it was covered with cottonwood, because deer were plentiful, because there were rabbits, and plenty of fish at the mouth of Walker Lake, that they should be allowed to settle at this point which now comprises the lands belonging to the Indians in the Walker River Reservation. As the years went on the superintendents located at Carson City tried to get the Indians to put the land under cultivation. In 1871 the superintendent wrote a letter to the Commissioner of Indian Affairs stating that there were then 50 acres under cultivation, and as the years rolled on

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it increased until at the present time there are approximately 2,000 acres under cultivation.

But in 1874 the reservation was established. The first time that an acreage was mentioned in any report of the Commissioner of Indian Affairs was when this suit was brought, and in this brief 10,000 acres are mentioned as the amount of land for which they demanded water. And the only time the acreage was mentioned was in this suit.

Previous to that time no land was mentioned. But in the Thurtell findings—I can not use the exact legal phraseology, but in the Thurtell findings the Federal court at Carson City filed the amounts of water that each settler was entitled to, and since the Government refused to give in on this adjudication he mentioned the amount of land actually under cultivation at the time of the termination of this suit, or at the time the findings were made, and this amounted to approximately 2,000 acres. So we have got it down to a fact that there never have been more than 2,000 acres and that previous to the present time there have been less than 2,000 acres.

Senator KENDRICK. Then you have the precedent there of State officials actually segregating so much water for these Indians; do you not?

Representative ARENTZ. Yes, sir; and we have no quarrel with that amount. The Indians have received this amount of water every year until 1924, when there was not a sufficient amount of water for anyone. In my own case, with 260 acres of alfalfa, I cut 40 acres of alfalfa. And the same thing applied to everyone up in this district. They had to borrow money to pay their taxes, and because the water was short in 1924 this suit was brought in 1924, because it was assumed in Washington, rather than from those who knew the conditions in Nevada, that the shortage was due to the use of the water by the whites.

The CHAIRMAN. Do you want the cost of this dam to be paid out of the tribal funds of the Indians or out of the Treasury of the United States?

Representative ARENTZ. I do not know how the cost should be paid, but it seems to me that if the United States Government, through the Attorney General, is asserting a right which is so broad and sweeping and will mean so much to every irrigating section in the 15 Western States, that the United States Government ought to satisfy the needs of the Indians by paying for this out of the Treasury of the United States.

The CHAIRMAN. How does it have such a broad effect?

Representative ARENTZ. For this reason, that there is hardly a western State that has not an Indian reservation. I do not care how much land is put under cultivation by the whites on any stream, the Indian department, through the Attorney General, can come in at any time and say: "There is a certain tract of land that is tillable upon these reservations, and we demand the water from this river to till these acres." And if they can do it in the case of the Walker River, on which they have never specified an acreage, they can do it any place else to any amount.

Senator KENDRICK. As I remember, Mr. Chairman, there is a precedent for this case almost parallel in the water rights claimed

for the Indians on the Shoshone Reservation in Wyoming. Without recalling in a sufficiently definite way to inform the committee, my impression is that in that case the Indian department claimed everything, but finally yielding to the step of granting that the Indians had the same rights as the white people, and no more and no less. Now that would not in any way prove contrary to what you are willing to concede in this case.

Representative ARENTZ. We are willing to concede more than that, Senator. We are willing to concede that the Indians in a normal year have all the water they want for 2,000 acres. We also go farther than that. Even though they have not filed on the flood waters of the Walker River we are willing to give them enough storage to take care of the 10,000 acres when that storage exists in the river.

Senator PITTMAN. Let me ask you a question right there. Did the Government on behalf of the Indians at any time attempt to comply with the law of appropriation of the State of Nevada?

Representative ARENTZ. They did. I understand they let the filings lapse.

Senator PITTMAN. They did file?

Representative ARENTZ. Oh, yes; and the superintendent of the Indians in Nevada time after time said, "I have filed for the Indians on the Walker River for water rights sufficient for their needs."

Mr. WILSON. I would like to correct you, Mr. Arentz, a little bit. They have one filing perfected for 32 one-hundredths of a foot by the State engineer of Nevada.

Representative ARENTZ. Well, that would not cover much ground.

Mr. WILSON. But they have one little filing perfected.

Representative ARENTZ. I stand corrected.

Senator ODDIE. That is a recognition by the Government of what we are contending for.

Senator SHORTRIDGE. How many irrigable acres are there in the Indian reservation?

Representative ARENTZ. The Government claims 10,000 acres.

Senator SHORTRIDGE. How many acres are being irrigated when water is available?

Representative ARENTZ. A maximum of 2,000.

Senator SHORTRIDGE. About how many acres are under cultivation by citizens of the United States along the reaches of the river?

Mr. WILSON. About 110,000 acres.

Senator SHORTRIDGE. The dam which has been suggested is to be placed about where in the river?

Representative ARENTZ. It is to be placed at the lower reaches of the river on the edge of the reservation, on the upper edge of the reservation.

Senator SHORTRIDGE. The reservation is at Schurz?

Representative ARENTZ. The reservation is at Schurz.

Senator SHORTRIDGE. Down to and including Walker Lake?

Representative ARENTZ. Yes.

Senator SHORTRIDGE. What is the condition of Walker Lake as to water, generally speaking?

Representative ARENTZ. Walker Lake has no outlet. The water is brackish and is not fit for the irrigation of land.

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Senator SHORTRIDGE. That is what I wanted to develop. But with this dam placed at or near the place indicated you think there will be developed for all time under normal conditions ample water through the growing season to irrigate fully 10,000 acres?

Representative ARENTZ. Ten thousand acres; yes, sir.

Senator SHORTRIDGE. Or practically all of the irrigable land within the Indian reservation?

Representative ARENTZ. Yes, sir; that is all the land that is claimed by the Indian department that exists on the reservation.

Senator SHORTRIDGE. Assuming there were Indians to cultivate them?

Representative ARENTZ. Assuming there were Indians to cultivate them. And the district is willing to go on record as giving the right to store a sufficient amount and giving them a sufficient amount of flood water to fill the reservoir, as is required for the Indian lands.

Senator SHORTRIDGE. But as a practical engineering proposition, if such a dam were built, that dam, in connection with other developments, would solve satisfactorily the problem before the people there?

Representative ARENTZ. Yes, sir; the dam for the storage of water in conjunction with the run-off from the lands above would supply all the needs of the Indians. And the reason the run-off is increasing is because during the summer, from the 15th of July until the end of the irrigating season, the amount of water placed upon the land was insufficient, and in many cases of no amount at all, so that the run-off now, with water placed throughout the entire season, will increase year by year.

Senator SHORTRIDGE. Now I understand that property owners, citizens of California, are in accord with the views of the citizens of Nevada. Is that a fact?

Representative ARENTZ. That is my understanding; yes.

Senator SHORTRIDGE. I have been given to so understand.

Representative ARENTZ. Yes, sir.

Senator SHORTRIDGE. There is no conflict of interest as among the California and the Nevada property owners?

Mr. WILSON. So far as the Nevada people are concerned, they are willing for you people to write your own decree out there, and that ought to be satisfactory.

Senator PRITMAN. I want to ask a question, Mr. Wilson. How many acres did you say would probably have to be abandoned along the river thereby the white settlers in the event that the plan of the Department of the Interior was carried out in compelling you to allow this water to flow down sufficient to irrigate the 11,000 acres without an impounding dam?

Mr. WILSON. I think at least one-third of the land.

Senator PRITMAN. How much would you figure that that one-third of the land would be in acreage?

Mr. WILSON. Between 30,000 and 40,000 acres.

Senator PRITMAN. Then, as I understand, the policy of the Department of the Interior, in conjunction with the Attorney General, is to waste water essential to—30,000 acres, did you say?

Mr. WILSON. Between 30,000 and 40,000.

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Q Senator PITTMAN: To waste waters that would irrigate between 30,000 and 40,000 acres, for the purpose of putting in irrigation an additional 7,000 or 8,000 acres on the reservation?

A Mr. WILSON: That seems to be the policy of the Government; and one thing that we do not appreciate and do not think we have been treated fairly in the matter is that if the Government had so declared on the start that they owned 150 second-feet of water for those Indians we would have known what we were going up against. Now that being the case the bond buyers would never have bought our bonds which we sold to build two reservoirs. Our bonds have depreciated since this suit has been started. With this suit hanging over us we can not get any people in there to settle up our country. We want to colonize that country. There are land holdings there of 20,000 acres belonging to one corporation that they want to cut up and colonize, but you can not get a man to go in with a litigation hanging over the situation. That they do not know how much water they are going to get, we do not know how much water the Government claims. We do not know when they may change their mind and we may find out that they have got 50,000 acres more than they want to put in. We do not know where we are at.

Q Senator PITTMAN. Well, apparently for the last 30 or 40 years the Indians have cultivated all the land that they could cultivate, that is, that they were physically able to cultivate, have they not?

A Mr. WILSON: Oh, yes, sure.

Q Senator PITTMAN. And consequently with the use of this additional water on the 8,000 or 9,000 acres that land will have to be sold to white people together with the water rights to get it cultivated, will it not?

A Mr. WILSON. Why, sure, if this 150 feet of water comes down there they will have to get white settlers in there to take it up; they will sell off the land with the water rights.

Q Senator PITTMAN. Then their policy of waste is not only to destroy the irrigation on 30,000 acres or 40,000 acres of presently irrigated land by white people, but it is solely for the purpose of selling 8,000 or 9,000 acres of land with water rights to somebody to induce them to cultivate that?

A Mr. WILSON. Well, they may have some other purpose in view that they have not told us about. To get sovereignty over the State waters, it looks like to me.

Q Senator PITTMAN. It is certainly not a high recommendation for conservation.

Q Senator SHORTRIDGE. I do not think it is quite fair to say that there is a policy of the Attorney General's office to bring about waste, Senator.

A Senator PITTMAN. Well, I could hardly call it a policy at all, but I mean the case that they are bringing right now.

Q Senator SHORTRIDGE. You mean, the consequence of the Government winning this suit would be waste; that is, if they succeed in establishing the legal rights which they claim. Why I am devoting time to the matter is to the end that we may show the Department of Justice and the Attorney General the result or consequence you mention.

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Senator PITTMAN. This is not the Department of Justice; this is the Department of the Interior. The Department of Justice has right to settle this thing.

Senator SHORTRIDGE. But I say, Senator, we may show the Attorney General the consequence all to the end that he would take kindly to a suggestion of compromise.

Senator PITTMAN. He will compromise if his client, the Secretary of the Interior, says so.

Senator SHORTRIDGE. Well, that is probably so.

Senator PITTMAN. Otherwise he has got to bring suit.

Senator SHORTRIDGE. Well, that may also be true.

Senator ODDIE. Mr. Wilson, Senator Pittman has just asked you some very pertinent questions regarding the amount of waste in case this suit of the Government prevails. What will be the effect on the people themselves whose land will be affected?

Mr. WILSON. Well, it affects everybody within the boundaries of the irrigation district, or within the watershed of the Walker River.

Senator ODDIE. What will be the effect on the owners of the 30,000 or 40,000 acres of land that will be put out of business?

Mr. WILSON. Well, just slow starvation.

Senator ODDIE. Will it mean a loss of their investments and labors for years?

Mr. WILSON. Yes.

Senator ODDIE. Roughly how many dollars of loss will that amount to?

Mr. WILSON. Well, I haven't any idea. It will run up into a large amount for this reason, that the people that are on the high bench lands have the better land there, much better land than the old settlers. Their land has got good drainage, and after it is in alfalfa for a few years it is fine potato land, and raises very large crops. Those people would be more likely to be affected than anybody else.

Senator ODDIE. How would you compare this loss in dollars and cents to the cost of this dam?

Mr. WILSON. Well, the cost of the dam would be a very small part of it.

Senator ODDIE. A small percentage of the loss to these people?

Mr. WILSON. Yes, sir.

Senator CAMERON. Mr. Wilson, just a question, please. The Department of Justice brought this suit at the instigation or the direction of the Secretary of the Interior, did they not?

Mr. WILSON. That is my understanding.

Senator CAMERON. Otherwise the suit would never have been brought by the Department of Justice?

Mr. WILSON. I do not think it would.

Senator CAMERON. They had not any information about this condition until it was forwarded to them from the Department of the Interior?

Mr. WILSON. They received the information from their agents at the Schurz Reservation.

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Senator CAMERON. Through the Department of the Interior?

Mr. WILSON. Yes, sir.

Senator CAMERON. That is all.

The CHAIRMAN. That is all, Mr. Wilson. I will call Mr. Frank Simpson.

STATEMENT OF FRANK SIMPSON, DIRECTOR OF THE WALKER RIVER IRRIGATION DISTRICT, WELLINGTON, NEV.

Mr. SIMPSON. My name is Frank Simpson. I am a director of the Walker River Irrigation District.

The CHAIRMAN. Where do you live?

Mr. SIMPSON. I live in Wellington, Lyon County, Nev.

The CHAIRMAN. Are you a farmer?

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. Do you own property in the Walker River region, Mr. Simpson?

Mr. SIMPSON. Yes; I own property on both the East and West Walker Rivers, both in California and Nevada.

The CHAIRMAN. When did you settle in that country?

Mr. SIMPSON. I was born and raised there. My father came in there in 1860 and settled in there and helped build the country up.

The CHAIRMAN. All right; you may make your statement.

Mr. SIMPSON. Well, since my father passed away I bought the rest of the heirs out. Of course that was when I was young in the game. There is one question that comes to my mind. I found that out in a little land deal in California. I bought a swamp and overflow patent there. Of course farther back they gave an abstract and a letter patent from the State of California. When the forest reserve was inaugurated I found that the State of California had no title from the United States to the State of California. And it always raised in my mind a question from that on as to whether the State had any right or not. That question has always been involved. Thereafter on purchasing land, which I bought quite a lot of, I have always followed back as far as I could on the record, but I never found anything interfering in any way with the water rights, or where the United States had laid claim to them, until 1924, when we were served with an injunction.

Now, I do not know as I can add anything else to this.

The CHAIRMAN. Is that the suit that is now pending and which is the reason for this hearing?

Mr. SIMPSON. Yes, that is the suit that is now pending.

The CHAIRMAN. That is the one that was started by the Department of Justice at the request of the Department of the Interior?

Mr. SIMPSON. Yes.

Senator CAMERON. Were you people served with any notice of this suit, that it was to be brought, before the papers were served on you?

Mr. SIMPSON. That is the first we knew of it, was when we were served with the injunction.

Senator CAMERON. You were never requested by the Secretary of the Interior or the land department to come in for a conference to see if this thing could be adjusted beforehand?

Mr. SIMPSON. No, sir.

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Senator CAMERON. They just arbitrarily went ahead and instituted the suit?

Mr. SIMPSON. They instituted the suit; that was the first we knew of it.

Senator ODDIE. And it was instituted after the district had expended over \$800,000 for the dam?

Mr. SIMPSON. Oh, yes; by several years.

Senator PITTMAN. Let me ask a question there: Where did you get your land to put up these reservoirs?

Mr. SIMPSON. We bought it from individuals.

Senator PITTMAN. Did you get any right from the Federal Government at all?

Mr. SIMPSON. There were a few pieces. I believe in the Topas Lake Reservoir that there were something like 200 to 300 acres.

Senator PITTMAN. Did the Government give you any rights of way or anything at all to aid you in building these reservoirs that you built?

Mr. SIMPSON. Yes; in the case of the Bridgeport Reservoir we got a right of way from the Forest Service.

Senator PITTMAN. From the Forest Service?

Mr. SIMPSON. Yes; from the Forest Service.

Senator PITTMAN. And did you apply to the Department of the Interior for water rights or anything of the kind?

Mr. SIMPSON. No; they sent us to the State for those water rights, to the State of California.

Senator PITTMAN. They sent you to the State for the water rights?

Mr. SIMPSON. Yes.

Senator PITTMAN. But the Government of the United States, the Reclamation Service, did know that you were as a district putting in your own reservoirs?

Mr. SIMPSON. Oh, sure.

Senator PITTMAN. And the Agricultural Department gave you a right of way across part of this land?

Mr. SIMPSON. It did.

Senator PITTMAN. And some of the land you acquired from the Federal Government for it?

Mr. SIMPSON. Yes, sir.

Senator PITTMAN. And during all that time the Government did not call to your attention any of these claimed water rights of the Indian or attempt to put in any condition that you should conserve them?

Mr. SIMPSON. Not that I or we got any notice of.

Senator PITTMAN. That is all.

The CHAIRMAN. Senator Oddie, do you want to ask any questions?

Representative ARENTZ. May I say a word there, Senator?

The CHAIRMAN. Mr. Arentz.

Representative ARENTZ. It is a fact that before the construction of the reservoir could be proceeded with it was necessary to obtain certain rights on the East Walker River. These rights were held by C. E. Luce and others and had to come before the Federal Power Commission, because Luce had acquired power rights on the East Walker River. So in fact the Secretary of the Interior sat in on the

hearings of the Federal Power Commission which gave to the Walker River irrigation district a right to the water as against power to be applied beneficially for irrigation.

Senator PITTMAN. I will add a little more to that same statement, Mr. Arantz, for I was one that took part in that matter, and I know it. The Walker River opposed the Luce grant of power on the ground that they wanted the water and needed the water for this very impounding. The Department of Agriculture had already granted the application to the district. The power commission was going to grant to Luce, and as you say, the Secretary of Agriculture, the Secretary of the Interior, and the Secretary of War sat on that commission, and the question that was submitted to them to determine was which was the higher use of the water, for power or for this irrigation district, and they held that the higher use was for this irrigation district and for this very impounding of water. So they had notice of it. And not only that, but you will recollect, and this is a fact of record, than in preparing the permit from the Department of Agriculture for rights of way, etc., over those lands they placed conditions in that grant, a number of conditions were placed in it, conditions suggested both by the power commission and by the Department of the Interior, and in none of those did they place any conditions—and all this is a matter of record—with regard to these Indians.

Representative ARENTZ. No consideration at that time was given the Indians, and it would have been very easy at that time to have specified that a certain amount of this water belonged to the Indians.

The CHAIRMAN. Very much of that is argumentative, and we want to get through. That is all, Mr. Simpson. Is Mr. Parker here?

STATEMENT OF GEORGE PARKER, DIRECTOR OF THE WALKER RIVER IRRIGATION DISTRICT, WABUSKA, NEV.

Mr. PARKER. My name is George Parker. I am director of the Walker River Irrigation District. I live at Wabuska, Nev.

The CHAIRMAN. Do you own property in the Walker River country?

Mr. PARKER. Yes, sir.

The CHAIRMAN. And what is your business?

Mr. PARKER. Farmer, cattle raiser.

The CHAIRMAN. Well, you may make such a statement as you desire, Mr. Parker.

Mr. PARKER. Why, I do not know that I could add a great deal to what has been stated otherwise than why this reservoir would cure most of the ills. My home ranch happens to be the last white man's ranch on the river. In fact, the reservation adjoins me on the east and north. And the river flows through my place into the reservation. My cattle run on the outside upon the range and mix up with the Indians' cattle. And I am back and forth over the reservation lands riding after my cattle, and I am familiar with all their conditions.

At the present time and every winter there is a great deal of water runs to waste between September and April of each year. It goes through the reservation lands and into Walker Lake. At the

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present time, and there has been since September about 40 second-feet passing by my place on to the reservation. That can be proven because we maintain a gauge there for the Government to measure the flow of the river there.

This dam that is spoken of in this bill would be about 3 miles below my place, and if raised to its greatest height would cover my whole ranch but not any other privately owned land. They could impound there and have every winter a total of from 10,000 to 14,000 acre-feet of water that would be an actual loss if not impounded in that dam. And then during the floods in the spring, of May and June, there would be more than sufficient water to fill it again.

The district has always recognized the right of these Indians to the water as given them in the Thurtell findings, and the commissioner that distributes the water each year has let that water go through to the Indians as per their priorities. If there was sufficient water in the river for the 1886 priority—that is, their latest priority—to furnish all the whites and also to furnish the Indians, their total water was allowed to go through. Mr. Thurtell found in his findings that they had 1,905.55 acres, I believe, under cultivation at that time, and allowed them—22.93 I believe is the exact amount—22.93 second-feet of water, but that was not carried in the decree, though it is mentioned in the decree.

Senator ODDIE. What year were the Thurtell findings?

Mr. PARKER. It was in 1907, I believe, and the suit was finished in 1919. But the white settlers have never denied the Indians their right to water. They have always recognized their right to water through appropriation and beneficial use. And we still recognize that right. We came here to Washington willing to accede to that right. But the Department of Justice seems to think that they should take the 150 second-feet.

Senator PITTMAN. How many Indians are there on the reservation?

Mr. PARKER. About 400.

Senator PITTMAN. Does that include men, women, and children?

Mr. PARKER. The total.

Senator PITTMAN. And how many acres do you think they have got under cultivation now?

Mr. PARKER. Well, not to exceed 2,000 acres.

Senator PITTMAN. Not to exceed 2,000 acres. What do they raise there, alfalfa?

Mr. PARKER. They raise alfalfa, potatoes, and grain, and cattle.

Senator PITTMAN. How much alfalfa do you think they raise on the 2,000 acres?

Mr. PARKER. Well, I could not state that.

Senator PITTMAN. Is it in a high state of cultivation?

Mr. PARKER. Some of it is, yes.

Senator PITTMAN. Some of it?

Mr. PARKER. Some of them are very good farmers.

Senator SHORTRIDGE. What tribe was that?

Mr. PARKER. The Piutes.

Senator SHORTRIDGE. Winnemucca was the chief of that tribe years ago?

Senator PITTMAN. Yes. A great old warrior.

The CHAIRMAN. Are there any further questions you want to ask, Mr. Parker?

Senator SHORTRIDGE. What is the type of your land?

Mr. PARKER. My home ranch is desert act. I filed on this land in 1918.

Senator SHORTRIDGE. When you acquired title to your land did you think and honestly believe that you acquired certain water rights?

Mr. PARKER. Well, in regard to that, Senator, before I could acquire title to this land the Government required me on making my final proof to show that I had water for this land. And they asked me to furnish certified copies to the Land Office of my rights, which I supplied first from the State engineer of our State showing that I had applied to the State engineer in 1916 for waters to this land. And also I was forced to supply a certified copy of the Walker River irrigation district record showing that I had acquired certain rights in the storage. They accepted these certified copies as proof that I had water for all of this land. They required that I show that I had sufficient water to irrigate all the land. And they issued me a patent on the 14th day of April, 1923, and on the 3d day of July, 1924, I was served with an injunction estopping me from taking any more water out of the stream.

Senator SHORTRIDGE. In other words, you made application for the land under then-existing law?

Mr. PARKER. The desert land act.

Senator SHORTRIDGE. Exactly; and you complied with all the requirements of the law, did you? Made ample and full proof?

Mr. PARKER. Yes, sir.

Senator SHORTRIDGE. Such proof as was deemed a compliance with the statute, with the law?

Mr. PARKER. Yes, sir.

Senator SHORTRIDGE. And thereupon the Government issued to you a patent?

Mr. PARKER. But before issuing this patent and after I had made my proof they sent two inspectors there to see if I had complied with that law entirely.

Senator SHORTRIDGE. Certainly, and finding that you had complied with it, as I understand the fact, the Government thereupon issued to you a patent conveying title from the Government to you?

Mr. PARKER. Yes, sir.

Senator SHORTRIDGE. And to your successors?

Mr. PARKER. I have the patent here in my pocket.

Senator PITTMAN. Now, wait. In applying for a patent for desert land entry they require the publication of a notice in the papers for a certain length of time to give everybody an opportunity to protest against the granting of that patent, do they not?

Mr. PARKER. Yes, sir.

Senator PITTMAN. And, of course, that was done?

Mr. PARKER. It was.

Senator PITTMAN. And not only that, but the same Department of the Interior that has charge of this Indian reservation imme-

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diately below your ranch was the department that had to pass on whether or not you had a water right before they would grant you a patent to that land?

Mr. PARKER. Yes, sir.

Senator PITTMAN. And they sent inspectors out from the Department of the Interior to check up on it and see whether you did have a water right sufficient to irrigate your land?

Mr. PARKER. They did. They sent two.

Senator PITTMAN. Sufficient to irrigate the whole tract, too, was it not?

Mr. PARKER. Yes; sufficient to irrigate the whole tract.

Senator PITTMAN. Because that is the law.

Mr. PARKER. These inspectors came to the place and had me go with them and show them my main ditch, the ditch system, and whole irrigation system. I had to take them over this tract of land and show them the land in cultivation and the land not put into cultivation yet.

Senator PITTMAN. Now, you are down the river the farthest of any white settler?

Mr. PARKER. Yes.

Senator PITTMAN. You are just above this Indian reservation, and you were applying to use water out of this same stream right above this Indian reservation, and at a very recent date, too?

Mr. PARKER. Yes, sir.

Senator PITTMAN. And this same Department of the Interior that has charge of the Indians had to pass on whether you had a water right or not?

Mr. PARKER. Yes, sir.

Senator PITTMAN. And did pass on it that you had a water right, a legal water right to irrigate all of your land, and the Department of the Interior inspectors checked it up, and then this same Department of the Interior that now has instituted this suit held that you did have a legal water right sufficient to irrigate all of your land, and confirmed that opinion by granting you a patent?

Mr. PARKER. They must have.

Senator PITTMAN. Yes.

Senator ODDIE. And, in your opinion, was a large part of the land in that valley taken up in the same way?

Mr. PARKER. In all the valleys a great portion of the land has been taken up under the homestead and desert land entries.

Senator ODDIE. So the Government has taken the same steps, so far as you know, regarding practically all of this land?

Mr. PARKER. Practically, yes. My grandparents took up land in Mono County, Calif., on the Walker River under a similar law.

Senator ODDIE. So the Department of the Interior has recognized the water rights of practically all the settlers in that same valley?

Mr. PARKER. They required us to show that we had water rights, and the only way of gaining those rights was to apply to the State for those rights, whether in Nevada or California.

The CHAIRMAN. I think you have made your position very clear, Mr. Parker.

Congressman Arentz, is there anything further that you want to say?

Representative ARENTZ. I do not know as I could add anything to what I have already said.

The CHAIRMAN. Senator Oddie, does that conclude the hearings?

Senator ODDIE. That concludes the hearings. I would like to state that for a long time past I have importuned both of the departments to discontinue this suit, and I have been unsuccessful in getting them to do it.

Senator SHORTRIDGE. I take the liberty, Mr. Chairman, of referring to the case I mentioned a moment ago. Of course I was speaking from recollection of many cases. The case of *State of Iowa v. Carr* is reported in Federal Reporter 191, page 257 et seq. I think that sooner or later before the Department of the Interior or, if it ever becomes necessary, in the court which now has jurisdiction over this case, these principles may well be invoked. Reading from the syllabus:

The equitable claims of a State or Nation appeal to the conscience of a chancellor with the same, but with no greater or less, force than would those of a private citizen, and, barring the effect of mere delay, they are judicable in a court of chancery, to whose jurisdiction the State or Nation voluntarily submits them, by every principle and rule of equity applicable to the rights of private citizens under like circumstances.

And reading from page 266:

But the great weight of authority, the stronger reasons, and the settled rule upon this subject in the courts of the United States, is that, while mere delay does not, either by limitation or laches, of itself constitute a bar to suits and claims of a State or of the United States, yet, when a sovereignty submits itself to the jurisdiction of a court of equity and prays its aid, those claims and rights are judicable by every other principle and rule of equity applicable to the claims and rights of private parties under similar circumstances.

I scarcely need remark that the Government goes into a court of equity not as a sovereign, not exercising the rights of sovereignty as such, but goes in as a private suitor asserting the rights of a landowner, if it be land, or rights appurtenant to land.

Now just for the record another brief citation found on page 260:

When the sovereign goes into court to assert a pecuniary demand against the citizen, the court has authority, and is under duty, to withhold relief to the sovereign, except upon terms which do justice to the citizen or subject, as determined by the jurisdiction of the forum in like subject matter between man and man.

And I have ever stood upon that proposition.

The CHAIRMAN. We will stand in recess until the call of the chairman.

(Thereupon, at 4.05 o'clock p. m. Thursday, January 28, 1926, the hearing was adjourned subject to the call of the chairman.)

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